

Message Text

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E.O. 11652: N/A

TAGS: CASC, AG (HENDRIX/RUPERT)

SUBJECT: DRUG TRIAL AND CONSULAR ACCESS

REF: STATE 118428

1. FOLLOWING RESPONSES KEYED TO QUERIES IN PARA ONE
REFTEL:

A. THERE ARE NO RELEVANT SECTIONS OF ALGERIAIAN
LAW TO QUOTE BECAUSE HENDRIX AND RUPERT WERE TRIED
IN CORRECTIONAL COURT ON JANUARY 28, NOT IN CRIMINAL
COURT. LEGAL REPRESENTATION IS OBLIGATORY ONLY IN
CRIMINAL COURT. CONOFF HAS BEEN TOLD BY SEVERAL
ALGERIAN LAWYERS THAT UNLESS DEFENDANT SPECIFICALLY
REQUESTS COUNSEL IN CORRECTIONAL COURT, OR UNLESS HE
PERSONALLY HIRES A LAWYER, HE WILL NOT HAVE LEGAL
REPRESENTATION. COLBERT MEMO OF APRIL 15 UNFORTUNATELY
DID NOT MAKE THIS DISTINCTION BETWEEN ALGERIAN
JUDICIAL PROCEDURE AS IT APPLIES TO CORRECTIONAL AND
CRIMINAL COURTS.

B. THUS AT THEIR JANUARY 28 TRIAL NEITHER RUPERT
NOR HENDRIX WERE REPRESENTED BY COUNSEL. THEY MAY NOT
HAVE BEEN AWARE OF OPPORTUNITY TO HIRE COUNSEL, BUT
ALGERIAN LAW DOES NOT SPECIFICALLY STATE THAT THEY HAD
TO HAVE LEGAL REPRESENTATION NOR EVEN THAT THEY HAD
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TO BE AWARE OF JUDICIAL PROCEDURE IN ALGERIA. THEY WERE

NOT OFFERED COUNSEL BECAUSE, AS STATED ABOVE, ALGERIAN JUDICIAL PROCEDURE IN THE CORRECTIONAL COURTS DOES NOT PROVIDE FOR THIS OFFER.

C. THERE WAS NO QUOTE RETRIAL UNQUOTE. THE APPEALS TRIAL FOR HENDRIX AND RUPERT WAS HELD IN THE ORAN APPEALS COURT ON MARCH 15 (THE ORIGINAL DATE OF THE APPEALS TRIAL WAS POSTPONED BY SEVERAL DAYS SO THAT THE LAWYERS COULD STUDY THE NEWLY PASSED LAW OF FEBRUARY 17, 1975). THEY WERE BOTH REPRESENTED BY LAWYERS. THE ORAN APPEALS COURT WAS THE COURT AUTHORIZED TO HEAR THE APPEAL OF THE ORIGINAL TRIAL HELD IN THE CORRECTIONAL COURT AND WAS AUTHORIZED TO REVIEW ALL ASPECTS OF THE CASE. AFTER THEIR SENTENCE WAS PASSED IN THE APPEALS COURT, HENDRIX AND RUPERT'S LAWYER HAD EIGHT DAYS TO APPEAL TO THE SUPREME COURT (COURT OF CASSATION), NOT ON THE MERITS OF THE CASE, BUT ON LEGAL, TECHNICAL GROUNDS. THE LAWYER DID NOT FILE AN APPEAL TO THE SUPREME COURT. HENDRIX AND RUPERT WERE MOVED FROM ORAN TO EL ASNAM PRISON ON MARCH 21, SIX DAYS AFTER THE APPEALS TRIAL, WITHOUT NOTIFICATION BEING GIVEN TO THEIR LAWYER OR TO AMCONSUL ORAN (ALTHOUGH ALGERIAN LAW DOES NOT REQUIRE THAT SUCH NOTIFICATION BE GIVEN). THEIR LAWYER PRESUMABLY SHOULD HAVE HAD TWO MORE DAYS TO CONSULT WITH HENDRIX AND RUPERT TO ASCERTAIN THEIR WISHES AND TO DETERMINE IF THERE WERE GROUNDS FOR MAKING AN APPEAL TO THE SUPREME COURT.

D. THE PRISONERS HAVE NOT BEEN DENIED ACCESS TO COUNSEL IN EL ASNAM. AMCONSUL ORAN REPORTS THAT THEIR LAWYER HAS NOT TRIED TO VISIT THEM. THE LAWYER REASONS THAT THERE IS NOTHING FURTHER THAT HE CAN DO, INASMUCH AS THEY HAVE BEEN CONVICTED ACCORDING TO THE ALGERIAN JUDICIAL PROCESS AND THEIR CONVICTION HAS BEEN CONFIRMED. AMCONSUL ORAN HAS BEEN ABLE TO VISIT THE PRISONERS; ALTHOUGH OBTAINING THE PERMIT TO VISIT IS TIME-CONSUMING, THE DELAYS ARE LARGELY BUREAUCRATIC AND ADMINISTRATIVE.

2. EMBASSY INITIALLY RAISED WITH MFA THE PROBLEMS ENCOUNTERED BY AMCONSUL ORAN IN OBTAINING CONSULAR ACCESS TO THE PRISONERS BEFORE THEIR APPEALS TRIAL IN LIMITED OFFICIAL USE

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MARCH. WE NOTE THAT THESE DIFFICULTIES OBTAINED FOR ONLY A LIMITED PERIOD OF TIME. IN AN AIDE-MEMOIRE PRESENTED TO THE DIRECTOR OF CONSULAR AND JURIDICAL AFFAIRS OF THE MINISTRY OF FOREIGN AFFAIRS ON MAY 20 THE AMBASSADOR AGAIN RAISED THE QUESTIONS OF CONSULAR NOTIFICATION AND CONSULAR ACCESS.

3. BEFORE DRAFTING PROTEST, SUGGEST DEPARTMENT REVIEW

AIDE-MEMOIRE AND NOTE AMBASSADOR PRESENTED AT MAY 20
MEETING. (AIDE-MEMOIRE AND NOTE POUCHED 23 MAY TO DEPT).LYNE

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